
WRITTEN TESTIMONY TO THE HOUSING COMMITTEE

TO: General Assembly Housing Committee

FROM: Bethany Berger

SUBJECT: Testimony in support of Fair Share House Bill 6633

DATE: March 1, 2023

Thank you for your careful consideration of Connecticut's housing needs.

I write to express my support for House Bill 6633. I am a professor at the University of Connecticut School of Law and a resident of Hartford.¹ I am originally from New York City, but between college, law school, and work, I have lived in Connecticut for more than two decades. I love my adopted state, but I am ashamed of its pervasive inequality. House Bill 6633 will help overcome that inequality, draw industry to the state, and reverse our population and job deficits.

Exclusionary zoning is a big reason for Connecticut's affordability and inequality crises. Connecticut has some of the strictest zoning restrictions in the nation. In a comprehensive study of towns around New Haven, Connecticut, Austin, Texas, and Palo Alto, California, Yale Law Professor Robert Ellickson found that zoning forms a "strait-jacket" that prevents neighborhoods from responding to changing needs, and that New Haven's suburbs were by far the most exclusionary of the three.² He also found that zoning restrictions in California contributed to the net outflow of residents from the state to Texas, which has looser land use restrictions and more affordable housing. National econometric studies agree that tightening land use restrictions are the reason that, although home prices have multiplied in the twentieth century, construction of new units plummeted after 1960.³ Exclusionary law stops supply from meeting demand, and we all suffer for it.

Restrictive zoning also undermines Connecticut's commitment to fighting climate change.⁴ Multi-unit housing uses half of the energy of single-family

¹ I write in my individual capacity, and not as an employee of the University of Connecticut.

² Robert C. Ellickson, *The Zoning Strait-Jacket: The Freezing of American Neighborhoods of Single-Family Houses* (January 7, 2020). <https://ssrn.com/abstract=3507803>.

³ See Kyle F. Herkenhoff, Lee E. Hohanian, Edward C. Prescott, *Tarnishing the Golden and Empire States: Land-use Restrictions and the U.S. Economic Slowdown*, 93 *J. Monetary Economics* 89 (2018).

⁴ Todd Litman, *Analysis of Public Policies that Unintentionally Encourage and Subsidize Urban Sprawl*, *The New Climate Economy-Cities: Sprawl Subsidy Report* 15 (Mar. 2015), <https://newclimateeconomyv.report/workingpapers/wp-content/uploads/sites/5/2016/04/public-policies->

houses, but cannot be built in most of our state. Single-family, large-lot zoning also undermines the density necessary for cost-effective, comprehensive public transportation. If we do not distribute denser, more affordable housing throughout the state, we will remain confined to ever more crowded highways, without the public transportation our modern economy needs.

The racial history of zoning is also no secret. Widespread zoning began after the U.S. Department of Commerce, under the guidance of then-Secretary of Commerce Herbert Hoover, promulgated a Standard State Zoning Enabling Act in 1922. Hoover served as Chair of the public-private Better Homes in America project, which emphasized the need to create environments to nurture “children of the best heredity” and “racial progress,”⁵ and advised homebuyers to use “[r]estricted residential districts . . . as protection against persons with whom your family won't care to associate.” Before the Act, lower courts often found that zoning ordinances were unconstitutional when they separated kinds of residences; after, the courts gave districts free rein to exclude people “with whom your family won't care to associate.”

Leading planner Robert Whitten was a key member of that committee. In 1921, Whitten drafted some of the nation's first single-family zoning restrictions for Cleveland's suburbs, which sought to control the movement of Eastern European Jews and Black families migrating from the South. In 1922, he drafted Atlanta's zoning plan, which created separate Black and White neighborhoods “in the interest of public peace, order, and security.” In 1924, Whitten went on to draft West Hartford's first zoning ordinance, introducing single-family zoning to our state.

Over the next decades, as Connecticut began to outlaw racial discrimination, Connecticut suburbs adopted ever more restrictive zoning. Connecticut's first zoning ordinances had relatively small minimum lot sizes (5,000-15,000 feet), but progressively increased lot sizes and restrictions on multi-family housing as the century progressed. When developers tried to build affordable housing in wealthy towns, they faced sharp opposition. In 1978, for example, the U.S. Department of Justice sued Glastonbury for its refusal to allow multi-family buildings most of whose residents were expected to be Black and Latino, while approving developments whose residents were expected to be White.⁶ The suit settled with a promise by Glastonbury to do better, but the town continued to block multi-family affordable housing. Fairfield, similarly,

[encourage-sprawl-nce-report.pdf](#); Zoning Reform is Connecticut's Best Response to Climate Change, Connecticut Law Tribune (Nov. 7, 2019), <https://www.law.com/ctlawtribune/2019/11/07/zoning-reform-is-connecticuts-best-response-to-climate-change/?slreturn=20210215224506>

⁵ Better Homes Manual at ix, 171 (Blanche Halbert ed. 1931).

⁶ Matthew Wald, *Racial Bias Case: Could Set Precedent*, NEW YORK TIMES, Dec. 7, 1980, at CN6.

has opposed numerous affordable housing proposals, with racially coded comments like those of Senator Fred Cosgrove in 1995 that limiting affordable housing was necessary to prevent Fairfield from becoming “another Bronx.” A 1986 study by the Connecticut Commission on Human Rights and Opportunities found that “the exclusionary planning and zoning activities of suburban towns severely limit the housing choices of protected classes” and that racial steering by real estate agents in selling and renting housing was still a “serious problem” in Connecticut.⁷ In 1988, the Connecticut Supreme Court found that a minimum-square foot requirement for single-family homes was unconstitutionally arbitrary.⁸ Nevertheless, exclusionary zoning in our state has only increased since then.

Blocked from building multifamily housing Connecticut’s suburbs, the state and federal governments have instead concentrated almost all subsidized housing in Connecticut’s struggling cities.⁹ As the Open Communities Alliance found in its 2017 report, *Out of Balance*, more than three-quarters of all affordable housing units built or funded since the 1980s have been in the small fraction of our state that is low or very low opportunity. This funding pattern perpetuates racial segregation and racial inequality. Today, half of our Black and Latino residents live in the 2% of Connecticut that is very low opportunity.

House Bills 6633 is an important step in addressing our state’s housing, equity, and climate needs.

House Bill 6633 allows for fairer distribution of all forms of housing throughout the state. It responds to the conditions in each municipality, carefully determining each town’s “fair share” of housing opportunities. It provides a limited approach, so that a “fair share” can be no more than a small fraction of all housing units in a town. It also puts municipalities in the drivers’ seat, allowing each town to determine how to authorize housing that will create the necessary units.

Adopting House Bill 6633 will help make real Connecticut’s commitments to equality and the environment and will put Connecticut on a stronger economic footing for the future. I commend you for considering this bill, and hope that you enact them.

⁷ “Housing Discrimination and Opportunities in the State of Connecticut”, The Connecticut Commission on Human Rights & Opportunities 5 (1986)

⁸ *Builders Service Corp., Inc. v. Planning & Zoning Com’n of East Hampden*, 208 Conn. 267 (1988).

⁹ State Subsidized Segregation in Connecticut, Connecticut Law Tribune, (Sept. 27, 2019) <https://www.law.com/ctlawtribune/almID/1202798935236/StateSubsidized-Segregation-in-Connecticut/?mcode=1381352268365&curindex=0>